

American Federation of State, County, and Municipal Employees, Council No. 65 and Sibley County Developmental Achievement Center.
Case AO-290

March 27, 1992

ADVISORY OPINION

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on February 18 and March 5, 1992, respectively, Sibley County Developmental Achievement Center (the Employer) filed a Petition for Advisory Opinion and supporting letter brief requesting a determination that the Board would assert jurisdiction over it. In pertinent part, the petition and brief allege as follows:

1. A proceeding, Case 92-RCE-1280, is currently pending before the State of Minnesota Bureau of Mediation Services (BMS) in which AFSCME, Council No. 65 (the Union) is requesting certification as exclusive representative of certain employees of the Employer.

2. The Employer is a private nonprofit organization which provides day training and habilitation services to mentally handicapped adults and/or persons with a related condition.

3. In the past fiscal year, the Employer had gross revenues of over \$250,000 and purchased approximately \$25,000 worth of materials or services directly or indirectly from outside the State of Minnesota.¹

4. The Employer is unaware whether the Union admits or denies the aforesaid commerce data and BMS has not made any findings with respect thereto.

¹ Although the Employer's petition itself alleges only that the Employer's gross revenues were "approximately" \$250,000, the Employer's supporting letter brief states that the Employer's gross revenues were in fact "over" \$250,000.

5. There are no representation or unfair labor practice proceedings involving the Employer and the Union pending before the Board.

Although all parties were served with a copy of the Petition for Advisory Opinion, no response was filed.

Having duly considered the matter,² we are of the opinion that the Board would assert jurisdiction over the Employer. The Board applies a \$250,000 annual-revenues discretionary jurisdictional standard to organizations that provide social services of the type provided by the Employer.³ As the Employer's petition and brief allege that its gross revenues in the past fiscal year were in fact over that amount, the Employer satisfies that standard. As the petition and brief further allege that the Employer's direct or indirect out-of-state purchases in the same period were approximately \$25,000, the Employer also satisfies the Board's statutory jurisdictional standards.⁴

Accordingly, the parties are advised that, based on the foregoing allegations and assumptions, the Board would assert jurisdiction over the Employer.⁵

² The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

³ See *Alan Short Center*, 267 NLRB 886, 887 (1983). See also *Hispanic Federation for Social & Economic Development*, 284 NLRB 500 (1987).

⁴ We assume in this regard that the local suppliers from which the Employer made its "indirect" out-of-state purchases had received the materials directly from outside the State. Cf. *Better Electric*, 129 NLRB 1012 (1960) (such an assumption necessary in order for purchases to constitute indirect inflow under Board's nonretail jurisdictional standard).

⁵ The Board's advisory opinion proceedings under Sec. 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view whether the Board would certify the Union as representative of the petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40(e) of the Board's Rules.